

Previous references.

251 of 07. Sl. 1-8. B. Ap. 08. 1908-9

File No. 283 of

Serial Nos. 1 to 4

(Courts)

Later references.

Ch 198-10

Ch 160-12- (1-13)

Ch 147-16 (1-2)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 to 4

Part B. for April 09.

SUBJECT.

leave to Mr. Justice Smay chief judge of the chief Court of Mysore.

Table of contents

From the Registrar, chief court, Mysore no 5242 of 276 82-3

States that the comptroller takes objection to grant a certificate to Mr. Justice Smay on the ground that the term of the latter's appointment do not admit of privilege leave being granted to him and requests that if his interpretation is accepted by the Govt. Mr. Justice Smay may be granted leave without allowances for 27 days.

2. To the Registrar chief court & to comptroller, Govt.

G. R. S. 58

No. 2748-9 of 17-3-09.

States that Mr. Justice Smay will be entitled to privilege leave under the Mysore Service Regulations & Sanctions the leave applied for by him.

P. S. S. S.

to the ~~com-ple~~ ~~supoie~~ Gazette No. 2750 of 17-3-09
Notified the grant of the above leave.

4. To the F. A. Resident Pol. No. 924 of 30-4-09
Intimates that Mr. Justice Osmany Chief Judge
has been granted privilege leave of absence
on half pay for 27 days with effect from 15th Aug
1909 in continuation of the midsummer vacation

GENERAL AND REVENUE SECRETARIAT.

(Courts.)

NOTES.

Ct. File No. 283

FILE HEADING.

Leave to Mr. Justice Ismay. Chief Judge
of the Chief Court of Mysore

From

The Registrar of the Chief Court of Mysore

No. $\frac{5242}{276}$

Dated 2. 3. 09. Received 3. 3. 1909.

Diary No. 2226

Enclos. one - Spare Copies

Serial No. 1

BRIEF ABSTRACT OF LETTER.

States that the Comptroller has refused to grant a certificate to Mr. Justice Ismay on the ground that the terms of the latter's appointment not admit of privilege leave being granted to him and requests that if this interpretation is accepted by Govt Mr. Justice Ismay may be granted leave without allowances for 27 days.

NOTES AND ORDERS.

1 The terms of the appointment of Mr. Justice Ismay are detailed in G.O. No. 27-2801-ct. 251-07-2 of 16th March 1908. The Chief Judge intends proceeding on a short

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visit to England. taking 27 days' leave from 15th June 1909, in continuation of the next annual vacation and he wants that this period maybe treated as privilege leave on half pay, unless the view taken by the Comptroller is accepted by the Govt. In case the interpretation of the Comptroller is correct, Mr Justice I may would ask that he maybe allowed leave without allowances for the above period. ~~The late Chief Justice Mr Justice I may's appointment does not contain any such expression. vide order of 14th Dec 1908. Subd for orders -~~

3309. 3 The Comptroller's interpretation of 'leave' contained in the order of his ^{Mr I may's} appointment does not seem to be correct. If leave is an allowance, it does not seem that the Chief Justice would be entitled to any kind of leave, say even casual leave.

~~MS~~ 4 To Branch II for favour of opinion. (That the file as ^{urgent} ~~incomplete~~).

4th March 09. Sd

5 subd.
with 4/13.

ms no
684 2009.

Serial
No.

6 The terms of Mr. Justice Daman's appointment make no reference to the question of leave and it is clear if the absence of any allusion to the Subject can be taken as meaning that the Officer is entitled to no kind of leave. It seems fair to allow the ^{Mr. Justice Daman} leave admissible to a Judge of the Chief or High Court in British India. Rule 17 under art 543 C.S.D. mentions the cases in which a Judge of such a Court can take privilege ^{leave} & get allowance for the period of leave. Whether the conditions mentioned in clause (a) of the said rule are complied with in this case is not mentioned & unless those conditions are fulfilled privilege leave with allow. is inadmissible. As Mr. Justice Daman has not been in Service for 3 years he cannot combine privilege leave with vacation. In the circumstances of the case the only course open appears to be to give ^{Mr. Justice Daman} extra ordinary leave according to rule 25 under art 543 C.S.D.

4/3/9

4/3/9

How so? Can he be given furlough on m.c. for 15 mos on £1000 per annum? (Rule 9 under art 543 C.S.D.) or furlough on private affairs for 6 mos? (Rule 10) W is by "the leave" referred to the privilege leave under rule 17. W 4/3/9

Rule 17(6) means that at any time within 3 years but not more than once in 3 yrs the combination is allowable. W

'Once in three years' understood to mean one every three years. W 4/3/9

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I think if the grant of any leave with
allow except the vacation had been intended,
the terms of appl^{ts} would have been explicit.
There was nothing unfair in not providing for
privilege leave in the agreement as it was for
3 years only & there was the annual vacation
of 2 months.

7 However, the question may be considered now
and orders passed. If it is decided to allow
Mr. Dwyer P.H. under the High Court & Chief
Court Rules (Art 543 C.S.R.), P.H. for
27 days in continuation of the vacation will
be admissible to him.

8 The leave will be without allow unless Mr. Dwyer
was detained on duty as vacation judge during
the last vacation in which case it will be on
full pay. Voluntary stay at the station is not
detention for this purpose unless ^{it is} necessary in
the interests of public duty viz. to work as vacation
judge.

9 If it is decided not to allow or add to
the terms of engagement extraordinary leave
without allow for the period asked for may be
granted.

10 Subd for orders.
20
5/2/09.

M
4/3/09
To Secy

Serial
No.

11 (Files Connected with Mr Best,
Mr Moore and Mr Shaley are also
put up.).

It will be seen from the
papers put up that Mr Best was
once given privilege leave on full pay
in continuation of the vacation, as
he had worked as a vacation judge.

This was in 1901. In 1898 he had
also been given 3 months' leave on
full pay in continuation of the vacation
on full pay, in consideration of the
fact of his having worked as vacation
judge and also because he had
presided over the Special Court.

The note by the ^{then} Secretary of that hon-
ourable Srinivasa Srinivasu Shows that it
was assumed that Mr Best was
entitled to pro privilege leave
under article 202 A (now corresponding
to 189) of the Mysore Service
Regulations, though ~~according to the~~
terms of his appointment, there
was no mention of the grant of leave
to him.

13 If this is taken as a precedent,
as I think it may be, Mr Srinivasu may

Flag x.

Flags G. H.

Flags 2 & 4

File No. 283 of 1908-09.

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No.

He granted leave on halfpay as
prayed for by him.

14 The argument of the
financial Branch that leave
can not be granted because
there is no mention of it in the
terms of Mr Diney's appointment
proves too much, because in that
case he could not be given even a
day's casual leave.

15 (Mr Moore did not go on
leave at all and no analogy can
be drawn from Mr Shaley's case
because as his leave was expressly
mentioned as regulated by the Mysore
Service Regulations. It has been
ascertained from the Chief Comptroller
that Mr Diney did not work
as a vacation judge last year.

5th March 09. S.D.

Secretary.

16 The terms of appointment do not
refer to the grant of leave, but I do not
think it was intended that no leave
should be granted. 'Easements' &
'encroachments' were, believe, intended

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No.

to refer to such conveniences as
free quarters, local & other all^{cs}, free
conveyances re. If any explicit
statement is necessary it may be
made clear that Mr. Somay will be
entitled to privilege leave & short leave.
It may perhaps be inadvisable to give him
a claim to long leave on medical certificate.

80068
8/3/09

Demar through (Mr.)

883

17 The question looks somewhat 8/3/09
Complicated. If the alternative ^{8/3/09}
of paying Mr. Somay leave without allowances
in contⁿ of vacation be accepted, a question
will arise whether pay is due for
the period covered by the vacation -
In view of seasonal conditions & the
paucity of officers Mr. Somay may be
requested to be kind enough to consider
the expediency of his postponing
going to England till next year - He
may be vacationing this year, and
in that case it would be easy to
overrule the Triennial Sec 7 and
grant privilege leave in continuation
of vacation next year.

12205
9.3.09

8/3/09
un

Submitted to His Highness.

18 Mr. S. Ismay, Chief Judge, has applied for 27 days leave from the 15th June 1909 in continuation of the next annual vacation. He says he was under the impression that he would be entitled to privilege leave on half pay, but that the Comptroller has stated that the terms of his appointment do not admit of privilege leave being granted; and he requests that if the view taken by the Comptroller correctly interprets the intention of His Highness the Maharaja he may be given leave without pay for 27 days.

19 The Financial Secretary surmises that, if the grant of any leave except the Vacation had been intended, the terms of Mr. Ismay's appointment would have been explicit on the point. He adds that if it is intended to allow Mr. Ismay privilege leave under the High Court and Chief Court rules (article 543 of the British Civil Service Regulations) privilege leave without pay for 27 days in continuation of the Vacation will be admissible and that if it is not intended to alter or add to the terms of the engagement extra-

leave without allowances for the period asked for may be granted.

As regards the Financial Secretary's surmise that it was intended not to allow any leave to Mr. Ismay except the Vacation, I may note that as far as I am aware there ^{was} ~~is~~ no such intention. I do not also see any reason to apply to Mr. Ismay the rules contained in the Civil Service Regulations (except in the matter of travelling allowances, which is specially referred to in the terms of ^{the} engagement), as he is not a lent officer, but only a retired officer of the Government of India. From the office notes and the reference files put up it will be seen that Mr. Justice Best was given privilege leave for two months and twenty six days on full pay in continuation of the vacation in 1901 and apparently this could only have been under the Mysore Service Regulations. As the question has been raised I think it may be definitely laid down that Mr. Ismay will be entitled to privilege leave and casual leave under the Mysore Service Regulations but to no other kind of leave; and privilege leave for 37 days on half pay may be granted to him in continuation of the Vacation.

I must at the same time inform His Highness' at-

to the First Councillor's note of the 8th instant on the file. He suggests that in view of the seasonal conditions and the paucity of officers, Mr. Ismay may be requested to postpone going to England till next year.

11/2/20

Serial
No.

27 Submitted with a draft notification and a draft D.O. as ordered above.

28 A draft order is also put up in view of the remarks at the end of para. 3 of the Dewan's Submission notes to His Highness -

Dec
16.3.09.

16/3/09

29 Please put up a revised draft as revised (Friday).

16/3/09. S.D.

30 Draft notification, order and D.O. put up as ordered

16/3/09. S.D.

Secretary). 31 Issue under notification 17/3/09

From the office

2 To the Registrar, Chief Court of Mysore.
" Comptroller to Govt. No. 2748-98 17.3.

States that Mr. Justice Ismay will be entitled to privilege leave and casual leave under the Mysore Service Regulations and Sanctions the leave applied for by him.

To the Compiler, Mysore Gazette -

No. 2750 of 17.3.09.

Notifies the grant of leave.

Mysore Gazette 18th March
P.T. Page 106

Serial
No.

As subd to
Secretary
with reference
to the Financial
Secretary's note
for & up below on
H. for or Gen
and having
provision leave
to in for the same

W.D.
15/3

33 did to secure the 100%
19309

17/3/09

33 I have since seen the Financial
Secretary's note of the 19th inst. taking
exception to the f. o. sanctioning leave
on half pay to Mr. Somay. I
have made some observations
below that note, which is
attached hereto.

28.3.09

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No.

28 Again in the second passage above quoted the words "remuneration of the nature described" ^{apparently} ~~must~~ means "remuneration not expressly sanctioned by the Govt of India". In this case privilege leave allowance is therefore a "remuneration of the nature ~~above~~ described". If in respect of this remuneration Mr. Denny is to be treated as a lent officer, he would be entitled only to such leave allowance as would be admissible under the C.S.R.

29 The rules are not very explicit on this subject but the intention seems to be clear that as regards emoluments not provided for in the terms of appointment sanctioned by the Govt of India, a British pensioner re-employed in a native state should not receive more favourable treatment than if he were a lent officer. In this case Mr. Denny has been given more favourable terms as regards Privilege leave allowance than would be admissible to him if he were a lent officer and I therefore beg to draw the attention of Govt to the matter.

M
19/3/9

40 [Mr. Denny I sent for the file yesterday but could not get it. Please get the file & put up this note at once to the administrative Dept. M. 19/3]

To The Assistant Secy. Revenue III

19/3/9

Mr. Lee has since seen the file, which has not

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No.

41 Please submit this with the file to Secretary. This point was not raised when the matter was discussed in the financial branch. If the view of the financial Secretary is to be accepted, then sanction of the Govt of India has to be obtained.

19/3/09 Stt.

Paper under disposal

* 42 The question whether the concession claimed by the Chief Judge was or was not an "easement or emolument" was one directly raised by Mr. Justice Ismay in the Registrar's letter of 2nd March last; and the Financial branch had therefore full opportunity ^{for} expressing its views when the file was referred to it on the 4th March. It is, I venture to think, very inconvenient to deal with objections taken, as in the present case, after the issue of final orders, and contrary to the ~~instructions~~ instructions in para 8 of the confidential order of 6th May 1907.

* Flag A

43 On the merits also, I think the objection now urged is unsound.

44 A reference to rule 1 (c) of the Rules appended to the Residency letter of 8th November 1905 throws light on what the Government of India mean by emoluments. The list given there, though not exhaustive but merely illustrative, indicates

* Flag B

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No.

pretty clearly what kinds of things were meant to be included under the term, which again is defined towards the end of the rule as "Every addition to salary whether in cash or not." Now, "salary" though it means "the sum of pay and acting allowance or charge allowance", has nowhere been defined as including leave allowance. The latter falls under a different category from salary and cannot therefore form an addition to it.

45 For these and other reasons, the objection taken by the Financial Secretary seems to me to be ~~absolutely~~ untenable.

46 If, however, it is thought there is any doubt in the matter, we may, to be on the safe side, perhaps intimate to the Residency the action taken by the Durbar in the present case.

Devery tho' 1/6/07
2/2/07

23/3/07
24/3/07

10243
24/3/07

47 In matters relating to British Service Regulations & British officers, I for one would be guided by Mr. Chakravarties opinion. *24/3/07*

24.3.07
24/3/07

48 The action taken by the Durbar may be reported to the Govt of India as suggested by the Fin. Secretary.

11

Submitted to His Highness.

49 I submit for orders the Financial Secretary's further note, dated the 19th instant, stating that the grant of privilege leave on half pay to Mr. Ismay, sanctioned by His Highness in his order dated 12th March 1909, is opposed to the orders of the Government of India on the subject of the easements of lent officers and retired officers employed by Native States. For the reasons mentioned in the General and Revenue Secretary's note dated 23rd March 1909, I am of opinion that the objection taken by the Financial Secretary is untenable. The First Councillor however says that in matters relating to British Service Regulations and British officers he "would be guided by Mr. Chakravarti's opinion". To remove all doubt in the matter, we may, I think, intimate to the Residency the action taken by the Government.

50 With reference to His Highness' direction that Mr. Ismay may be asked what arrangements he proposes during his absence, I submit for orders Mr.

Mr. Ismay's letter saying that "the only arrangement necessary will be to gazette the Senior Judge to act as Chief Judge during his absence".

26/2/1909

u

Record of Cases submitted for the Orders
of His Highness the Maharaja.

Subject.

26.3.09
765

Financial Secretary's note that the
order granting privilege leave on half
pay to Mr Justice Ismay is opposed to
the orders of the Government of India.

786

51.

Order.

~~K R W~~

29/3/09

435
313.09

Recd
1/4/09
2/4/09
30/3/09
M
1/4/09

Serial
No.

52 After circulation to Secy & Co.,
Please show to the Secy; & then put
up draft of letter to Secy & reply applying
to Justice Krishna Rao to act as Chief Judge.
As a grant of certificate is involved, the
letter to Secy should come ^{to me} from the General
Branch. *14/4/09*

*Recd from Secy
9/4/09*

Recd Br I & S
53 Please put up draft to Secy ~~to~~
very early (reply may come later on, I think)
14/4/09

12/4/09

54 I shall be glad to see the draft before issue of the
in no reply. *M 17/4*

*File copy in IV
for the Secy & Secy
in the Secy*

*St
14/4/09*

*Br II
Mis 521 of 108/09*

55 Submitted with a draft to the
Residency.
VS Secy. 7th Secy
14-4-09

*ASB
14/4/09*

*St
15/4
H Secy to*

*Recd
85/4/09
56/4/09
16/4/09*

17/4/09

Serial
No.

58 To Branch E for note return after issue of the
draft. The file may be returned after a brief
record.

19/4/09 59 Draft condensed slightly.
Maybe a hpt.
Done this 2nd (1)

19/4/09

19/4

87)

321
20/4/09

19/4/09
20/4

60 Draft appended with an addition
what may save correspondence.

61 & Done by 18/10/09

27/4/09

To Branch E for issue return - 19/4

25/4/09

AREC
4/5

To. The First Assistant Resident

Pol no. 924 & 30.4.09

Intimates that Mr. Justice S. Dmay
Chief Judge, has been granted privilege leave of
absence on half pay for 27 days with effect
from the 15th June 1909 in continuation of the
midsummer vacation.

Chief Court of Mysore,
Bangalore dated, 2nd: March 1909.

From,

The Registrar of the
Chief Court of Mysore.

To,

The Secretary to Government,
General and Revenue Departments.

Sir,

I am directed to say that Mr. Justice Ismay, the Chief Judge, is desirous of taking 27 days' leave from the 15th June '09 in continuation of the annual vacation so as to enable him to pay a short visit to England. As he was under the impression that he would be entitled to privilege leave on half pay he asked the Comptroller to furnish the usual certificate. The Comptroller replies that the terms of the appointment do not admit of privilege leave being granted. Copy of the Assistant Comptroller's letter is enclosed.

Mr. Justice Ismay respectfully submits that the expression 'easements or emoluments' have been too strictly construed. When he accepted the appointment of Chief Judge, it did not occur to him that he would be debarred from a privilege which is enjoyed by every Judicial Officer whether inside or outside British India. If the view taken by the Comptroller correctly interprets the intention of His Highness the Maharaja then Mr. Justice Ismay has nothing further to urge but he would ask that he may be allowed 27 days' leave without pay.

As he has already arranged for a passage to England Mr. Justice Ismay ventures to ask that this reference may receive early attention.

I have the honour to be,
Sir,

Your most obedient servant;

[Signature]
R E G I S T R A R.

B.V.

2/

Comptroller's Office,

1 - 3 - 1909.

Dear Mr. Rajaratna Mudaliar,

Your D.O. of date asking for a privilege leave certificate on behalf of Mr. Justice Ismay.

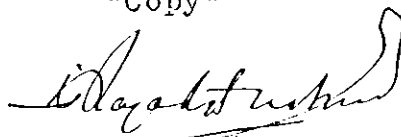
The terms of the appointment of Mr. Ismay seem to contemplate only the annual vacation (2 months) as the period of recreation, and hence no provision appears to have been made for the grant of privilege leave. I am therefore sorry to say that this Office is not in a position to certify to the admissibility of privilege leave asked for.

I have consulted the Comptroller also in the matter, and he is also of the same opinion.

Yours sincerely,

Sd/- L. Bistopant Badami.

"Copy"



B.V.

R E G I S T R A R.

.ES/

Diary No. of letter replied to

Proceedings of the Government of His Highness
the Maharaja of Mysore.GENERAL AND REVENUE
SECRETARIAT.

()

READ—

, the

190

Date of issue

Signed by

Letter No. 5243 dated
276
the 2nd March 1909, from
the Registrar of the Chief
Court of Mysore, stating
that Mr. Justice Ismay,
Chief Judge is desirous of

ORDER THEREON.—No.

taking privilege leave on
half pay for 27 days in
continuation of the next
annual vacation with a
view to pay a short visit
to England, adding that
as the Comptroller has declined
over

SUBJECT

2/1/13
17/3-
Campbell
2/3

~~I~~ furnish ^{with} to ~~grant~~ him the usual certificate on the ground that the terms of the Chief Judge's appointment do not admit of such leave being granted

~~and that if the said certificate is accepted~~

~~by the Govt~~ the Chief Judge would ^{only} ask that he may be allowed leave without pay for the said period

and if the Comptroller's view is ~~accepted~~ accepted in time by the Govt.

Order thereon.

J 2748-9 817-309.

2. The ~~grant of~~ to Mr. Justice

~~Domay~~ of the privilege leave

on half pay for 27 days applied for by Mr. Justice Domay in continuation of the next annual vacation is sanctioned and the same ^{only} will ~~be~~ notified in the Gazette.

In this connection

1. Govt observe that although the terms of the appointment of Mr. Justice Domay contained in Govt Order J 2799-2801.

GENERAL AND REVENUE
SECRETARIAT.

(Continuation Sheet draft form.)

Take the opportunity
of laying down

not to any

Ob 251-07-2 dated the
16th March 1908 do not
explicitly provide for the
grant of any leave to
~~that officer~~ ^{him}, it was not
~~however~~ the intention
of Govt to debar him
from all claim for the
same. As the question
has been raised, Govt
~~are pleased to lay down~~
definitely that Mr.
Justice Ismay will be
entitled to privilege
leave and Casual
leave under the Mysore
Service Regulations, but
not to any other kind of leave

Secretary

To

The Registrar, Chief Court
a Comptroller to Govt

Copies to Branches V

M.C.
des
16/3/09

Diary No. of letter replied to _____

General and Rev. Secretariat

()
, the 190 . }

Date of issue _____

Signed by _____

Notification No. J 2750
817-309

To

C.S. J. B. J.
Mr. Justice S. J. B. J. Chief
Judge of the Chief Court of
Mysore is granted privilege
leave of absence on half
pay for 27 days with effect
from the 15th June 1909 in
continuation of the midsummer
vacation.

By order.

J. B. J.
for SecretaryTr 678
18-3-09upon Gazette 18th March
Part I page 106reinstated
17/7/09 Camp
17/3

May 1909

To

The Comptroller; Mysore
Gazette for publication
with a Kannada translation
over.

J 2751 817-309

(1) SUBJECT Copy to the Registrar, Chief
Court of Mysore with reference
to his letter N^o 524.3 J 2.3.1909-
276(2) J 2752 817-309.
Copy to the Comptroller, to

Copy to

V
G.R.S. 26]

26
2 copies
7
File No.

Serial No. 4

Diary No. of letter replied to _____

Pol. No. 924

Em 1.

General and Revenue Secretariat

()
, the 190 .)

To

The F. A. Resident
in Mysore.

Sir,

Date of issue

30-4-09

Signed by

Mr K S Chandrasekhar
H. Mysore

I am directed to
invite your attention
to Mr. Rennie's letter
no. 1486 of 10-3-08
~~intimating~~ conveying
the sanction of the
Govt. of India to the
employment of Mr.
S. Ismay as Chief
Judge, Mysore Chief
Court, and to inti-
mate for the informa-
tion of the Hon'ble
the Resident that
Mr. Justice Ismay
Chief Judge & the Chief Court of Mysore

His Highness has granted to

SUBJECT.

100
30/4

~~has been granted~~
 privilege leave of
 absence on half pay
 for 27 days with
 effect from the 15th
 June 1909 in Conti-
 nuation of the
 mid summer vaca-
 tion.

→ Let any
 doubts should
 arise as to my
 having title to this
 leave I am to
 append copy of the
 order (no. J27th 8
 of 17 March 09) issued
 by the Dewan which will
 fully explain the position.

A copy of the order issued by the Dewan is
 I have etc forwarded for information

Draft.

OS
 14-4-109
 by CSB
 14/4

1909
 For Secy

File
 27 Apr

Thing

Copy to Branch II.

List of enclosures

are SN

Copied by

Examined by SN